United States District Court
Southern District of Texas
Victoria Division

STATE OF TEXAS, *et al.*,
Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Defendants.

Case 6:23-cv-00007

PLAINTIFF STATES' REPLY IN SUPPORT OF MOTION TO RECONSIDER JUDGMENT

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This Court's judgment rests on the incorrect assumption that the CHNV Program caused illegal crossings by CHNV aliens to decrease. However, the numbers show that illegal border crossings by *all* aliens decreased around this time. There is thus no reason to attribute causation for the decrease in CHNV aliens' crossings to the CHNV Program.

In their responses, the Federal Defendants and the Intervenors take causation as a given and never address Texas's arguments. Nor do they deal with the fact that illegal crossings of CHNV aliens have subsequently increased significantly and are now at the highest levels ever seen.

Furthermore, Texas has alleged unique harms caused by the CHNV Program itself because it provides parole to an additional 30,000 aliens per month who would not have received it, and parole status entitles aliens to receive government benefits and protection from removal that other unlawfully present aliens cannot receive. Since Texas has established its harm, it was inappropriate for the Opinion to engage in an accounting exercise attempting to offset the claimed benefits of the CHNV Program with its harms.

Because of these issues, the Opinion contains manifest errors of law and fact, and the Plaintiffs' Motion should be granted.

I. This Court has jurisdiction.

This Court has jurisdiction to consider the Plaintiffs' Motion for Reconsideration. This is so even though the Plaintiffs have already filed their Notice of Appeal. ECF No. 307. The Intervenors believe otherwise, claiming that the Notice of Appeal divested this Court of jurisdiction to hear the Plaintiffs' Rule 59(E) reconsideration motion. ECF No. 312 at 3–5.[1] However, they are incorrect.

"If a party files in the district court any of" certain enumerated types of motions "and does so within the time allowed … the time to file an appeal runs for all parties from the entry of the

[1] References to pagination for documents filed on this Court's electronic docket are to the stamped page numbers in the header of those filings.

order disposing of the last such remaining motion." Fed. R. App. P. 4(a)(4)(A). One such motion is "to alter or amend the judgment under Rule 59." *Id.*

The order of filing does not affect the application of Fed. R. App. P. 4(a)(4)(A)— it applies equally whether a notice of appeal was filed before or after the Rule 59 motion. As the Fifth Circuit has explained, "the timely filing of a motion listed in Rule 4(a)(4)(A) suspends or renders dormant a notice of appeal until all such motions are disposed of by the trial court. This holds true regardless of whether the motion was filed before or after the notice of appeal." *Ross v. Marshall*, 426 F.3d 745, 751–52 (5th Cir. 2005) (citation omitted); *Palacios v. Stephens*, 723 F.3d 600, 603 (5th Cir. 2013) ("a notice of appeal filed before a timely filed Rule 59 motion is sufficient to bring the underlying case to the court of appeals but 'is, in effect, suspended until the motion is disposed of, whereupon, the previously filed notice effectively places jurisdiction in the court of appeals.'" (quoting *Ross*, 426 F.3d at 752 n. 13)); *United States v. Holy Land Found. for Relief & Dev.*, 722 F.3d 677, 684 (5th Cir. 2013) (same); *Burt v. Ware*, 14 F.3d 256, 258–260 (5th Cir. 1994) (same). The notes to Fed. R. App. P. 4 also make clear that the rule "provides that a notice of appeal filed before the disposition of a specified posttrial motion will become effective upon disposition of the motion." Fed. R. App. P. 4 Advisory Committee note (1993 Amendments).

II. The Plaintiffs have demonstrated manifest errors of law and fact.

A Rule 59(e) motion should be granted when there has been a "manifest error of law or fact." *Trevino v. City of Fort Worth*, 944 F.3d 567, 570 (5th Cir. 2019). A manifest error of law "is one that is plain and indisputable, and that amounts to a complete disregard of the controlling law." *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004) (cleaned up). A manifest error of fact is one that is "an obvious mistake or departure from the truth." *Berezowsky v. Rendon Ojeda*, 652 F. App'x 249, 251 (5th Cir. 2016) (quoting *Bank One, Texas, N.A. v. F.D.I.C.*, 16 F.Supp.2d 698, 713 (N.D. Tex. 1998)). Both categories of error are present here.

The Intervenors improperly mischaracterize the Plaintiffs' Motion as a "rehash" of "recycled arguments." ECF No. 312 at 3. Rather, the Motion raises critical legal issues and facts not considered in the Opinion.

A. Texas's injuries alleged in the Amended Complaint were "fairly likely" to occur.

When a party seeks prospective relief, the proper standing inquiry is whether that party's "future injury is fairly likely." *All. for Hippocratic Med. v. FDA*, 78 F.4th 210, 228 (5th Cir. 2023) (cleaned up).

In the Amended Complaint, Texas alleged multiple harms from the CHNV program, such as that the CHNV Program "allows hundreds of thousands of aliens to enter the United States who otherwise have no basis for doing so," "the ability of the Plaintiff States to provide services to aliens paroled in through the program," that "the number of illegal aliens in Texas increases," and that "allow[ing] these new aliens into the United States in violation of federal law .... strains Texas's resources and ability to provide essential services, such as emergency medical care, education, driver's licenses, and other public safety services." ECF No. 20 ¶¶ 3, 62, 64, 71–72.

These harms were fairly likely when the amended complaint was filed, and subsequent events have confirmed this. ECF 310 at 14–17.

1. The CHNV Program did not cause illegal crossings by CHNV aliens to decrease.

The Federal Defendants and the Intervenors make much of the Opinion's finding that the number of CHNV aliens entering the United States decreased around the start of the CHNV Program and when the Amended Complaint was filed. *E.g.,* ECF No. 312 at 6; ECF No. 313 at 9. True enough. However, it is manifest error to attribute the causation of this decrease to the CHNV Program. The Plaintiffs have explained why—because *all* illegal border crossings decreased over that same period. Indeed, illegal border crossings of non-CHNV aliens showed the same decline as the decline seen among CHNV aliens. *See* ECF No. 310 at 15.

Neither the Federal Defendants nor the Intervenors ever grapple with this fact or attempt to offer *any* explanation. Rather, they simply ignore it. If the CHNV Program was responsible for

declines in illegal immigration, then why did *all* illegal immigration go down at the same time? The only reasonable explanation is that some factor *other* than the CHNV Program was responsible. If the CHNV Program did not cause a decline in illegal border crossings by CHNV aliens, then it was manifest error for this Court to find that Texas did not have standing.

2. Texas's claimed harms have come to pass.

Further confirming that Texas's claims were fairly likely is that Texas's claimed harms have come to pass. The CHNV Program is running at nearly maximum capacity, adding almost 30,000 new aliens to the United States every month. ECF No. 304 at 5–7. And illegal crossings by CHNV aliens are higher than ever. ECF No. 310 at 14–15.

Admittedly, the significant increase in illegal CHNV alien crossings post-dates the Amended Complaint. However, Texas is not proffering these facts as evidence of the actual injury suffered by Texas after the Amended Complaint was filed, but to confirm that Texas's alleged injuries alleged in the Amended Complaint were fairly likely.

This was the approach endorsed by Judge Ho's concurrence in *Crawford v. Hinds Cnty. Bd. of Supervisors,* and it is equally applicable here. 1 F.4th 371, 377 (5th Cir. 2021). The Federal Defendants attempt to distinguish *Crawford* because, they argue, "Plaintiffs have not shown there was any increase in arrivals of CHNV nationals or associated costs following implementation of the CHNV processes at the time of the operative complaint." ECF No. 313 at 12. However, because the Plaintiffs have indisputably shown that *all* illegal border crossings decreased at the time of the Amended Complaint, they have proven that the Federal Defendants are incorrect when they argue that the CHNV Program was the cause of the decrease in CHNV alien crossings around the time of the Amended Complaint. With the Federal Defendants' claim of causation soundly defeated, then the eventual enormous *increases* in CHNV aliens illegally entering the United States serve to confirm that Texas's claimed harms were fairly likely at the time of the Amended Complaint.

How do the Federal Defendants explain this significant increase in CHNV aliens illegally crossing into the United States? They can't. Instead, they evade the issue, making vague claims that this evidence "does not establish that encounters of CHNV nationals have increased because of the CHNV processes" and that the increase might have "occur[red] for many reasons." ECF No. 313 at 12–13.

They are forced to take the bizarre and contradictory position that *all* of the earlier decreases in CHNV alien crossings were entirely caused by the CHNV Program but that *none* of the later increases were caused by the same thing. Their position falls apart under the weight of its own contradictions.

The Motion provides a few examples of the Federal Defendants discussing the declines in CHNV crossings in the spring of 2023 and neglecting to attribute those declines to the CHNV Program, but instead to other unrelated policies and programs. ECF No. 310 at 15–17. The Federal Defendants also take issue with this, claiming that these policies and programs also post-date the Amended Complaint. ECF No. 313 at 15. But this misses the point. What these examples show is that, outside of this litigation, the Federal Defendants readily admit that changes in immigration levels are multi-faceted and caused by a variety of factors working in concert. When their ability to prevail in litigation is not at stake, the Federal Defendants readily admit that many factors affect border crossing numbers. It was thus manifest error to attribute the transitory decreases in alien crossings to the CHNV Program.

B. Offsetting benefits may not be considered in the standing analysis.

"[O]nce injury is shown, no attempt is made to ask whether the injury is outweighed by benefits the plaintiff has enjoyed from the relationship with the defendant." *Texas v. United States* (*DAPA*), 809 F.3d 134, 156 (5th Cir. 2015). The Federal Defendants claim that because "Texas failed to establish any injury at all" and "[a]ny issue of offsets is therefore irrelevant." ECF No. 313 at 5. However, as explained above, Texas successfully met its burden to show that an increase

in CHNV aliens was "fairly likely" when the Amended Complaint was filed. Because Texas *did* meet its burden, it was a manifest error of law for the Opinion to consider offsetting benefits.

Apart from this, Texas *did* show that it suffers harm from the CHNV Program that exists independent of the number of illegal entries of CHNV aliens. Specifically, aliens paroled through the CHNV program cause unique harm distinct from the presence of illegal aliens who have not been paroled. The parole statute entitles aliens to receive public benefits that unlawfully present aliens cannot. Paroled aliens become eligible "for various benefits after five years," including Medicaid, SNAP, and TANF. ECF No. 244 at 10 ¶ 45; ECF No. 285 at 36. Thus, even if the CHNV Program caused a decrease in CHNV aliens unlawfully present in Texas, it indisputably caused an *increase* in the number of *paroled* aliens in Texas, which injures Texas through increased expenditures on such programs. It is, therefore, incorrect for the Federal Defendants to argue that Texas is not harmed because "[t]here is no basis to argue that the CHNV processes increased the number of CHNV arrivals or releases." ECF No. 313 at 8. Even if CHNV arrivals *had* decreased overall (which they have not), the number of CHNV parolees has indisputably *increased*, which has increased the number of aliens in Texas who will be eligible for those benefits, and who will not be subject to removal (aliens being removable would mean that Texas would not have to spend money on incarceration, public education, or Emergency Medicaid costs that it has to expend on them when present in the State).

CONCLUSION

The Court should grant Plaintiffs' motion for reconsideration.

Dated: May 2, 2024.

Respectfully submitted,

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I certify that this motion complies with Rule 16.c. of Judge Tipton's Court Procedures because it contains 1,997 words, excluding the parts of the document exempt from that Rule, according to Microsoft Word.

/s/Ryan D. Walters
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CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing document was filed electronically (via CM/ECF) on May 2, 2024, which automatically serves all counsel of record who are registered to receive notices in this case.

/s/Ryan D. Walters
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